



## FUSION FOR ENERGY

The European Joint Undertaking for ITER and the Development of Fusion Energy  
**THE GOVERNING BOARD**

### **DECISION OF THE GOVERNING BOARD OF THE EUROPEAN JOINT UNDERTAKING FOR ITER AND THE DEVELOPMENT OF FUSION ENERGY AMENDING THE IMPLEMENTING RULES OF THE FINANCIAL REGULATION**

THE GOVERNING BOARD OF THE EUROPEAN JOINT UNDERTAKING FOR ITER AND  
THE DEVELOPMENT OF FUSION ENERGY,

Having regard to the Council Decision (Euratom) No 198/2007 of 27 March 2007 establishing the European Joint Undertaking for ITER and the Development of Fusion Energy (hereinafter “the Joint Undertaking”) and conferring advantages upon it<sup>1</sup> (hereinafter “the Constituent instrument”) and in particular Article 5 thereof;

Having regard to the Statutes annexed to the Constituent instrument (hereinafter “the Statutes”) and in particular Article 6(3)(h), Article 13, and Annex III thereof;

Having regard to the Council Regulation (EC, Euratom) No 1605/2002 on the Financial Regulation applicable to the general budget of the European Communities<sup>2</sup> (hereinafter “the general Financial Regulation”);

Having regard to the Commission Regulation (EC, Euratom) No 2343/2002 of 19 November 2002 on the framework Financial Regulation for the bodies referred to in Article 185 of the general Financial Regulation, as last amended by Commission Regulation (EC, Euratom) No 652/2008 of 9 July 2008, (hereinafter “the Framework Financial Regulation”);

Having regard to the Financial Regulation of the Joint Undertaking, as last amended by Decision of the Governing Board on 24-25 November 2011 (hereinafter “the Financial Regulation”)<sup>3</sup>;

Having regard to the Decisions of the Governing Board of 8 July 2008<sup>4</sup>, of 10 June 2010<sup>5</sup>, of 2 December 2010<sup>6</sup>, of 17 May 2011<sup>7</sup> and of 25 November 2011, adopting amendments to the Implementing Rules of the Financial Regulation;

Having regard to the Report of the Joint Working Group of the Administration and Finance and Executive Committees on the Improvement of the Financial Rules of the Joint Undertaking F4E(12)-GB23-XX, approved on 29 June 2012;

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<sup>1</sup> OJ L 90, 30.3.2007, p. 58

<sup>2</sup> OJ L 248, 15.09.2002, p.1. Regulation as last amended by Regulation 1995/2006/EC/Euratom (OJ L 390, 30.12.2006)

<sup>3</sup> F4E(11)-GB21-10b, adopted on 25/11/2011

<sup>4</sup> F4E(08)-GB06-06a, adopted on 08/07/2008

<sup>5</sup> F4E(10)-GB16-16

<sup>6</sup> F4E(10)-GB18-18, adopted on 02/12/2010

<sup>7</sup> F4E(11)-GB20-07i

Whereas:

- (1) In accordance with Article 5(1) of the Constituent instrument, “the Joint Undertaking shall have a distinct financial regulation based on the principles of the Framework Financial Regulation”,
- (2) In accordance with Article 135 of the Financial Regulation it is necessary that the Governing Board adopts amendments to the implementing rules taking into account the amendments to the Financial Regulation,

HAS ADOPTED THIS DECISION:

*Article 1*

The Implementing Rules of the Financial Regulation are amended as follows:

- (1) Article 16.2 is replaced by the following:

As regards to commitment transaction type, only heads of department may receive a delegation for acting as authorizing officer of the Joint Undertaking. Heads of department may further sub-delegate with prior approval by the Director their delegation for commitments to the middle management staff members defined by the Joint Undertaking.

- (2) Article 48, an additional point 5 (new) is added:

Any amount receivable in relation to the Annual Membership contributions shall bear interest in accordance with paragraph 2b and 3 if not paid on the deadline referred to in Article 45(3)(b).

- (3) Article 75, an additional point 11 (new) is added:

“Building contracts” cover the purchase, long lease, usufruct, leasing, rental or hire purchase, with or without option to buy, of land, existing buildings or other real estate.

- (4) Article 90.1 is replaced by the following:

The call for tender is the phase where the Joint Undertaking shall invite simultaneously and in writing all or some of the selected candidates to submit tenders. A minimum number of candidates shall be invited to submit a tender according to Article 117.

- (5) Article 101.1 is replaced by the following:

The negotiated procedure is the procurement procedure in which the Joint Undertaking shall invite economic operators of its choice to submit tenders and, subject to the condition that they satisfy the exclusion and selection criteria, negotiate the terms of the contract with one or more of them.

- (6) Article 117.1 is replaced by the following:

In a restricted procedure, the number of candidates invited to submit a tender may not be less than five, while the candidates invited to participate in a dialogue may not be less than three, provided that a sufficient number of candidates satisfy the selection criteria.

- (7) Article 124.1, last paragraph, is replaced by the following:

For contracts with a value greater than EUR 50 000, an award notice shall be published in the Official Journal of the European Union. A reference to that notice shall be published on the Joint Undertaking's official internet website. The award notice shall describe the outcome of the procedure for the award of contracts or framework contracts. It shall not be compulsory for specific contracts based on framework contracts.

- (8) Article 125.1 and 2 is replaced by the following:

1. The authorizing officer responsible shall not sign a contract having a value greater than EUR 50 000 with the successful contractor until 14 calendar days (hereinafter "the standstill period") has elapsed.

The standstill period shall run from either of the following dates:

- (a) the day after the simultaneous dispatch of the award decisions and decisions to reject;
- (b) where the contract or framework contract is awarded pursuant to a negotiated procedure without prior publication, the day after the contract award notice referred to in Article 124 (1) has been published in the Official Journal of the European Union.

If necessary, the authorizing officer responsible may suspend the signing of the contract for additional examination if this is justified by the requests or comments made by unsuccessful or aggrieved tenderers or candidates or by any other relevant information received. The requests, comments or information must be received during the period set in the first subparagraph. In the case of suspension all the candidates or tenderers shall be informed within three working days following the suspension decision.

Except in the cases provided for in paragraph 2, any contract signed before the expiry of the period set in the first subparagraph shall be null and void.

Where the contract or framework contract cannot be awarded to the successful envisaged tenderer, the contracting authority may award it to the following best tenderer.

2. The standstill period shall not apply in the following cases:

- (a) In case of open procedures where only one tender has been submitted
- (b) In case of restricted procedure, negotiated procedure with prior publication of a contract notice or competitive dialogue where the tenderer to whom the contract is to be awarded was the only one that satisfied the exclusion and selection criteria,

provided that, in accordance with Article 136, the other candidates or tenderers have been informed of the grounds of their exclusion or rejection shortly after the relevant decisions have been taken on the basis of the exclusion and selection criteria

- (c) In case of specific contracts based on a framework contract and by applying the terms set out in such framework contract, without reopening the competition to other economic operators;
  - (d) In case of extreme urgency referred to in Article 100(2) (a)
- (9) Article 135, points 2, 3 and 8 are replaced by the following:
- 2. For open procedures the time limit for receipt of tenders shall be no less than 52 calendar days from the date on which the contract notice was dispatched to the Official Journal for publication.
  - 3. For restricted or negotiated procedures with prior publication of a contract notice and the competitive dialogue the time limits shall be no less than:
    - (a) 37 calendar days for the receipt of requests to be selected to tender or requests to participate from the date on which the contract notice was dispatched to the Official Journal for publication;
    - (b) in the case of restricted procedure, 40 calendar days for the receipt of tenders from the date on which the invitation to tender is issued.
  - 8. Where duly substantiated urgency renders impracticable the minimum time limits laid down in paragraph 3, the Joint Undertaking may set the following time limits:
    - (a) 15 calendar days for the receipt of requests to be selected to tender or requests to participate from the date on which the contract notice was dispatched to the Official Journal for publication;
    - (b) 10 calendar days for the receipt of tenders from the date on which the invitation to tender is issued.
- (10) Article 160.3 is replaced by the following:
- The authorizing officer responsible may, depending on his assessment, waive the obligation to provide the evidence for co-financing referred to in paragraph 1.
- (11) Article 162.5, 5th subparagraph, is replaced by the following
- The authorizing officer responsible may, depending on his assessment, waive the obligation of audit referred to in the first subparagraph.
- (12) Article 162.6 is replaced by the following:

The applicant shall indicate the sources and amounts of any other funding received or applied for in the same financial year for the same action or for any other related actions.

- (13) Article 164, relating to a reference to the Financial Regulation, is replaced by the following

(Article 103(2) of the Financial Regulation)

- (14) Article 168 is replaced by the following:

Applicants shall be informed as soon as possible and in any case within 15 calendar days after the information on the award decision has been sent to the beneficiaries.

*Article 2*

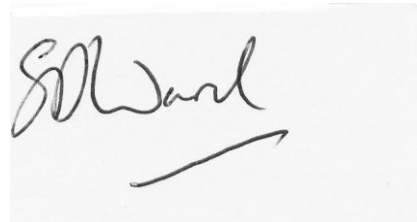
This decision shall enter into force on 1 July 2012.

*Article 3*

Public procurement and grant award procedures launched before the entry into force of the amended implementing rules stemming from this decision shall continue to be subject to the rules applicable at the time when those procedures were launched.

Done at Barcelona, 29 June 2012

For the Governing Board

A handwritten signature in black ink, appearing to read 'Stuart Ward', with a long horizontal flourish underneath.

**Stuart Ward**

Chair of the Governing Board